

# **Exhibit A**

Duggan, Ph.D., Mark G. - Vol. III

July 25, 2008

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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IN RE: PHARMACEUTICAL ) MDL NO. 1456  
INDUSTRY AVERAGE WHOLESALE ) CIVIL ACTION  
PRICE LITIGATION ) 01-CV-12257-PBS  
THIS DOCUMENT RELATES TO )  
U.S. ex rel. Ven-a-Care of ) Judge Patti B. Saris  
the Florida Keys, Inc. )  
v. ) Chief Magistrate  
Abbott Laboratories, Inc., ) Judge Marianne B.  
No. 06-CV-11337-PBS ) Bowler  
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Videotaped deposition of MARK G. DUGGAN PH.D.

Volume III

Washington, D.C.

Friday, July 25, 2008

9:00 a.m.

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<p style="text-align: right;">Page 613</p> <p>1 indirect data.</p> <p>2 Q. Most of the 44 NDCs at issue in this case</p> <p>3 are a dollar or less on your average price</p> <p>4 calculations; is that right?</p> <p>5 MR. LAVINE: Object to form.</p> <p>6 A. Let's go to the --</p> <p>7 Q. Table 1. At least as of 1996.</p> <p>8 A. It looks like many of them hover around a</p> <p>9 dollar and then there are a decent number above a</p> <p>10 dollar and also a decent number below. I don't know</p> <p>11 if there are 22 less than a dollar. But yeah, it</p> <p>12 looks plausible that more are below a dollar than</p> <p>13 above a dollar per package.</p> <p>14 Q. Are you familiar with when manufacturers</p> <p>15 calculate AMP whether they include or exclude the</p> <p>16 impact of prompt pay discounts?</p> <p>17 MS. THOMAS: Objection to form.</p> <p>18 Q. Strike that. Bad question.</p> <p>19 Do you know under current CMS guidance</p> <p>20 whether when calculating AMPs manufacturers include</p> <p>21 the impact of prompt pay discounts?</p> <p>22 MS. THOMAS: Objection to form.</p>	<p style="text-align: right;">Page 615</p> <p>1 25 percent on average.</p> <p>2 Q. Well, the 25 percent was a scaling factor</p> <p>3 that First Databank had in effect, correct, as you</p> <p>4 just testified?</p> <p>5 MR. LAVINE: Object to form.</p> <p>6 A. So I am not the person who -- whether</p> <p>7 Abbott reported multiple prices -- I raised the</p> <p>8 possibility earlier that Abbott reported not just one,</p> <p>9 but multiple prices. So it seems possible that Abbott</p> <p>10 reported prices with, you know, a WAC of 40 and an AWP</p> <p>11 of 50. So whether in some cases that 25 percent</p> <p>12 margin was First Databank induced or Abbott induced</p> <p>13 I'm not a hundred percent sure. But yeah, my</p> <p>14 understanding is that First Databank often applied</p> <p>15 this 25 percent markup.</p> <p>16 Q. So it wouldn't be fair in your view to hold</p> <p>17 Abbott responsible for an additional 25 percent</p> <p>18 scaling factor that it may not have had influence</p> <p>19 upon?</p> <p>20 MR. LAVINE: Object to form.</p> <p>21 A. I don't know about fair. I think, though,</p> <p>22 that I am saying here suppose the WAC had been</p>
<p style="text-align: right;">Page 614</p> <p>1 A. I'm not sure.</p> <p>2 Q. Now, you also -- the second reason you</p> <p>3 indicated that you were quite conservative was the</p> <p>4 scaling up of your average prices by 25 percent,</p> <p>5 right?</p> <p>6 MR. LAVINE: Object to form.</p> <p>7 A. Yes.</p> <p>8 Q. Why did you scale up by 25 percent?</p> <p>9 A. I believe that I discussed this earlier in</p> <p>10 the report, that my examination of the data revealed</p> <p>11 that for most of the 44 products in most periods the</p> <p>12 AWP was 25 percent greater than the WAC, wholesaler</p> <p>13 acquisition cost. And so even though -- so basically</p> <p>14 here even though the average price at which</p> <p>15 wholesalers are selling is typically much less than 25</p> <p>16 percent greater than the price at which wholesalers</p> <p>17 are acquiring products, I used this 25 percent scaling</p> <p>18 factor that First Databank had in effect.</p> <p>19 So in general actually if one looks at the</p> <p>20 price at which wholesalers sell the products and the</p> <p>21 price they pay for them, there's very little</p> <p>22 difference between those two, certainly not close to</p>	<p style="text-align: right;">Page 616</p> <p>1 reported more accurately and then we -- although it</p> <p>2 won't have all of the -- it is missing some things.</p> <p>3 It seems plausible to me that Abbott was aware of this</p> <p>4 125 percent scaling factor. So it's -- the issue of</p> <p>5 fair or not, I'm not really sure how to respond to</p> <p>6 that.</p> <p>7 Q. Well, what was Abbott supposed to do about</p> <p>8 the 25 percent scaling factor?</p> <p>9 MR. LAVINE: Object to form.</p> <p>10 A. That's not an issue that I've looked into.</p> <p>11 Perhaps Abbott could have reported, in my earlier</p> <p>12 example, a WAC of 40 and an AWP of 41 instead of 40</p> <p>13 and having 50 result. I'm not sure what -- that's</p> <p>14 just not something I've looked into much.</p> <p>15 Q. You found that the difference between WAC</p> <p>16 and -- or the price at which purchasers or providers</p> <p>17 purchased the drugs from wholesalers were only 2 to 3</p> <p>18 percent higher than what again?</p> <p>19 A. What wholesalers --</p> <p>20 Q. Purchased it from manufacturers?</p> <p>21 A. Right. It's first order. It's going to</p> <p>22 vary across products and all that.</p>

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